

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BAY AREA PAINTERS AND TAPERS PENSION
TRUST FUND, et al.,

Plaintiffs,

v.

GOLDEN VAS PAINTING, a California
partnership; CHRISTINA MARGARET
VASILATOS, individually and as
qualifying partner; and HELENI MARIA
TOFAVAHA, individually and as
qualifying partner,

Defendants.

No. C 10-2923 CW

ORDER ADOPTING
MAGISTRATE JUDGE'S
REPORT AND
RECOMMENDATION
REGARDING
PLAINTIFFS' MOTION
FOR DEFAULT
JUDGMENT, GRANTING
PLAINTIFFS'
MOTIONS TO
EXPEDITE, GRANTING
IN PART
PLAINTIFFS' MOTION
FOR DEFAULT
JUDGMENT, AND
REMANDING FOR
FURTHER
PROCEEDINGS

The Court has reviewed Magistrate Judge Donna Ryu's Report and Recommendation Regarding Plaintiffs' Motion for Default Judgment (Docket No. 43), as well as Plaintiffs Bay Area Painters and Tapers Pension Trust Fund, et al.'s objections to the recommendation that default judgment is not appropriate against Defendants Christina Margaret Vasilatos and Heleni Maria Tofavaha. Plaintiffs object on the grounds that Vasilatos and Tofavaha are members of Defendant Golden Vas Painting, a partnership. Thus, Plaintiffs contend, default judgment should be entered against them.

The Court finds the Magistrate Judge's report correct, well-reasoned and thorough, and adopts it in its entirety. That Vasilatos and Tofavaha may be partners of Golden Vas Painting does not mean that they satisfy the definition of "employer" under the

1 Employee Retirement Income Security Act (ERISA). See 29 U.S.C.
2 § 1002(5). Plaintiffs point to section 5 of article 20 of the
3 collective bargaining agreement (CBA), which states, "If this
4 Agreement is signed by a member of a partnership, it shall apply to
5 them and each of them individually." Stafford Decl. in Support of
6 Supp. Objection, Ex. A, at 53. It does not appear that Plaintiffs
7 presented this argument to the Magistrate Judge. However, this
8 provision is not relevant because there is no allegation or
9 evidence that Vasilatos or Tofavaha signed the CBA. Accordingly,
10 Plaintiffs' objections are OVERRULED. Plaintiffs' claims against
11 Vasilatos and Tofavaha are dismissed with leave to amend to plead
12 additional facts demonstrating their individual liability.

13 Plaintiffs move to expedite the entry of judgment, indicating
14 that Golden Vas Painting soon will be receiving funds that could be
15 used to satisfy Golden Vas Painting's debt to Plaintiffs. Without
16 the immediate entry of judgment against Golden Vas Painting,
17 Plaintiffs assert, these funds could be dissipated. Plaintiffs'
18 motions to expedite are GRANTED. (Docket Nos. 49 and 50.)

19 For the foregoing reasons, IT IS HEREBY ORDERED that
20 Plaintiffs' Motion for Default Judgment is GRANTED to the extent it
21 pertains to Golden Vas Painting. Based on Plaintiffs'
22 representations and because there is no just reason for delay,
23 judgment shall enter forthwith against Golden Vas Painting in
24 accordance with the Report and Recommendation. Because this
25 judgment does not dispose of all the claims in this case, it is a
26 partial judgment entered pursuant to Federal Rule of Civil
27 Procedure 54(b).

28 The Court DENIES without prejudice Plaintiffs' Motion for

1 Default Judgment to the extent it pertains to Vasilatos and
2 Tofavaha. Within seven days of the date of this Order, Plaintiffs
3 may amend their complaint to plead additional allegations that
4 support imposing individual liability on Vasilatos or Tofavaha.
5 Plaintiffs may support their allegations by proffering relevant
6 evidence. If Plaintiffs file an amended complaint, they may again
7 move for default judgment, and the motion will be referred to the
8 Magistrate Judge. Plaintiffs' failure to file an amended complaint
9 in accordance with this Order will result in the dismissal of their
10 claims against Vasilatos, Tofavaha or both for failure to
11 prosecute.

12 Plaintiffs seek attorneys' fees and costs incurred after
13 December 2, 2010. It does not appear that Plaintiffs presented a
14 request for these fees and costs to the Magistrate Judge.
15 Accordingly, Plaintiffs' request for additional fees and costs is
16 remanded to the Magistrate Judge for consideration. Within seven
17 days of the date of this Order, Plaintiffs shall submit time
18 records to the Magistrate Judge, similar to those contained in
19 Exhibit C of the Second Supplemental Declaration of Michele R.
20 Stafford, to support their request for additional attorneys' fees
21 and costs. If necessary, the Magistrate Judge may seek additional
22 briefing or schedule a hearing at her convenience. The Magistrate
23 Judge shall prepare a report and recommendation.

24 IT IS SO ORDERED.

25 Dated: 5/24/2011


CLAUDIA WILKEN
United States District Judge

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27 cc: Magistrate Judge Ryu
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